

KEREN PRESCOTT

SUPERIOR COURT

V.

JUDICIAL DISTRICT OF  
HARTFORD

YULIYA GILSHTEYN

MARCH 15, 2023

## MEMORANDUM OF DECISION

The plaintiff, Keren Prescott, seeks a prejudgment remedy pursuant to General Statutes § 52-278 et seq., against the defendant, Yuliya Gilshteyn. Ms. Prescott sues Ms. Gilshteyn for assault, battery, intentional infliction of emotional distress, and a violation of General Statutes § 52-571c for intimidation based on racial bigotry or bias because Ms. Gilshteyn spat in Ms. Prescott's face during a protest at the Connecticut State Capitol on January 6, 2021. The court finds probable cause to sustain Ms. Prescott's claims. The court finds probable cause that a judgment equal to or greater than \$295,239.60 will be rendered in favor of Ms. Prescott, taking into account all defenses, counterclaims, and setoffs that may be asserted by Ms. Gilshteyn. The court's reasoning is set forth below.

## FACTS

The court heard testimony on Ms. Prescott's application for prejudgment remedy on June 16, 2022, June 24, 2022, July 27, 2022, and October 26, 2022. The court heard testimony from Melinda Floyd-Torres, a friend of Ms. Prescott's; Jesse Correa; Charles A. Gallagher, PhD., a professor of sociology and criminal justice at LaSalle University in Philadelphia; Ms. Gilshteyn; and Ms. Prescott. The court took into evidence fourteen exhibits, including three videos showing the incident at issue

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from different vantage points. It is the court's responsibility to weigh the evidence and judge the credibility of the witnesses. See *TES Franchising, LLC v. Feldman*, 286 Conn. 132, 143, 943 A.2d 406 (2008). With that responsibility in mind, the court makes the following factual findings.

Keren Prescott is a forty-one year old African-American woman. She suffers from Multiple Sclerosis (MS) and is immunocompromised. Ms. Prescott is a sexual assault survivor. Ms. Prescott testified that stress and viral infections can produce an increase or flare-up of her MS condition. Ms. Prescott testified that two members of her family have died from MS.

On January 6, 2021, Ms. Prescott attended a political protest at the Connecticut State Capitol building with her friend Melinda Floyd-Torres. Both Ms. Prescott and Ms. Floyd-Torres describe themselves as activists who frequently attend protests to demonstrate against racism and espouse the views of the Black Lives Matter movement and an organization called Powerup CT. January 6, 2021, was the date that Connecticut state legislators were due to be sworn in for their new terms at the Capitol building. Neither Ms. Prescott nor Ms. Floyd-Torres were involved in organizing the protest at the Capitol building on January 6. Nevertheless, Ms. Prescott and Ms. Floyd-Torres decided to attend the protest because they saw it as an opportunity to express their views to state legislators and to the public.

Upon entering the Capitol grounds on January 6, Ms. Prescott and Ms. Floyd-Torres made their way through the crowd to the north side front entrance to the Capitol building. While they were walking, and throughout the entire time period relevant to

this memorandum of decision, Ms. Prescott and Ms. Floyd-Torres were videotaping their actions and surroundings with their iPhones, as well as live streaming their actions and what they were seeing via Facebook. Ms. Prescott and Ms. Floyd-Torres made their way to a metal “bicycle” fence surrounding the exterior of the Capitol building. Upon arriving at the fencing, Ms. Prescott began using a bullhorn or megaphone to loudly shout slogans such as “black lives matter,” “racism is a public health crisis,” and other similar statements.

Yuliya Gilshteyn is an approximately forty year old Caucasian woman. Ms. Gilshteyn is Jewish. Ms. Gilshteyn is originally from Lithuania but immigrated to the United States when she was a teenager shortly after the fall of the Soviet Union. Ms. Gilshteyn experienced instances of persecution and antisemitism in the Soviet Union, and such experiences were among the reasons she immigrated to the United States. Ms. Gilshteyn also has experienced antisemitism in the United States. Ms. Gilshteyn has two young children, one of whom is a baby. Ms. Gilshteyn supports the ideas of the medical freedom movement, which, as relevant to this memorandum of decision, generally opposes medical mandates such as required vaccinations and masking requirements. Ms. Gilshteyn found out about the January 6 protest at the State Capitol building via Facebook and attended the protest in order to express her support for the ideas of the medical freedom movement.

At the time Ms. Prescott and Ms. Floyd-Torres began shouting their slogans, Ms. Gilshteyn was also at the metal “bicycle” fence and about twenty feet to Ms. Prescott’s and Ms. Floyd-Torres’ right. Four people separated Ms. Gilshteyn from Ms.

Prescott and Ms. Floyd-Torres, who were standing together along the metal fence. At all times relevant to this memorandum of decision, Ms. Gilshteyn was holding one of her children, a baby, who was strapped to the front of Ms. Gilshteyn, wrapped in a blanket, and facing inward.

On the videos of the incident at issue, Ms. Gilshteyn can be seen standing along the metal fence and looking in the direction of Ms. Prescott as Ms. Prescott shouts, “black lives matter” and similar slogans into her megaphone. Another protestor (not Ms. Gilshteyn) can be heard on the video shouting, “all lives matter.” After a short period of time (forty seconds or so), Ms. Gilshteyn can be seen leaving her previous position at the metal fence and walking over to stand next to Ms. Floyd-Torres. Ms. Prescott was standing next to Ms. Floyd-Torres. At the prejudgment remedy hearing, Ms. Gilshteyn testified that she moved toward Ms. Floyd-Torres and Ms. Prescott because she was concerned that Ms. Prescott’s loud shouts regarding Black Lives Matter were overshadowing what Ms. Gilshteyn understood as the protest’s intended purpose of espousing support for the medical freedom movement. The court credits Ms. Gilshteyn’s testimony on this point.<sup>1</sup>

The videos of the incident show that when Ms. Gilshteyn walked over to stand next to Ms. Floyd-Torres, Ms. Floyd-Torres was wearing a mask. Ms. Prescott was wearing a mask and glasses. Ms. Gilshteyn was not wearing a mask. At this point, Ms.

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<sup>1</sup> Regardless of the original intended purpose of the protest at the State Capitol building on January 6, 2021, on the actual day in question, based on the court’s viewing of the video evidence and testimony, there were a variety of political interests represented at the protest.

Gilshteyn leaned over to Ms. Floyd-Torres and asked Ms. Floyd-Torres about “black on black crime.” Ms. Prescott responded that there is no such thing as “black on black crime” and asked Ms. Gilshteyn why she did not ask about “white on white crime.”<sup>2</sup> Ms. Gilshteyn responded that she is more of a minority than either Ms. Floyd-Torres or Ms. Prescott.<sup>3</sup> Ms. Gilshteyn then used her hand to push Ms. Floyd-Torres’ megaphone away from Ms. Gilshteyn.<sup>4</sup> Ms. Floyd-Torres and Ms. Prescott shouted through their megaphones at Ms. Gilshteyn to back away from them. More words were exchanged between the parties. Ms. Prescott shouted through her megaphone at Ms. Gilshteyn to “back the fuck up” and remarked that Ms. Gilshteyn was unmasked. Ms. Prescott continued shouting her slogans. Ms. Prescott again shouted through her megaphone at Ms. Gilshteyn to back up. Ms. Floyd-Torres shouted through her megaphone at Ms. Gilshteyn to back up and remarked that Ms. Gilshteyn was unmasked and had a baby. Ms. Gilshteyn, who had essentially remained stationary since walking over to Ms.

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<sup>2</sup> The court accepted Professor Charles Gallagher as an expert on sociology and issues related to racism and criminal justice. Professor Gallagher testified that the phrases “all lives matter” and “black on black crime” can be seen as racist tropes indicating that individuals who use those phrases may hold racist attitudes. The court credits Professor Gallagher’s testimony on these points.

<sup>3</sup> Ms. Gilshteyn testified that she was referring to her understanding that the Jewish population of the United States is smaller than the African-American population of the United States. The court credits Ms. Gilshteyn’s testimony on this point. The court also credits the testimony of Ms. Prescott and Ms. Floyd-Torres that they were unaware on January 6, 2021, that Ms. Gilshteyn was Jewish.

<sup>4</sup> Ms. Gilshteyn testified that, given Ms. Floyd-Torres’ continued shouting through her megaphone, Ms. Gilshteyn was concerned about potential damage to her child’s hearing and that she and her views were being, in effect, shouted down. The court credits the second reason proffered by Ms. Gilshteyn, but not the first.

Floyd-Torres' and Ms. Prescott's position, took a step forward toward the metal fence. Ms. Prescott again shouted through her megaphone at Ms. Gilshteyn to back up and remarked that Ms. Gilshteyn was unmasked. Ms. Gilshteyn turned suddenly toward Ms. Prescott, spat directly into Ms. Prescott's face, and walked away hurriedly.

Ms. Prescott was struck by Ms. Gilshteyn's spit on her mask, glasses, and megaphone. Ms. Gilshteyn testified that she was spitting at Ms. Prescott's megaphone, not at Ms. Prescott's person. The court does not credit Ms. Gilshteyn's testimony on this point. The court concludes, as a factual matter, that Ms. Gilshteyn intended to spit at and on Ms. Prescott. Ms. Prescott testified that she experienced severe emotional distress as a result of being spat upon by Ms. Gilshteyn. Ms. Prescott testified that she experienced severe emotional distress over increased concerns that she may contract COVID-19,<sup>5</sup> emotional distress over concerns that COVID-19 might worsen her MS, humiliation over being spat upon in public, and that the bodily violation of being spat upon reawakened the trauma of her past sexual assault. The court credits Ms. Prescott's testimony.<sup>6</sup>

After Ms. Gilshteyn spat on Ms. Prescott and walked away hurriedly, Ms. Prescott and Ms. Floyd-Torres pursued Ms. Gilshteyn. A small crowd began to form. Some members of the crowd appeared to want to protect Ms. Gilshteyn from Ms.

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<sup>5</sup> The court takes judicial notice that COVID-19 can be transmitted through saliva. See <https://www.cdc.gov/coronavirus/2019-ncov/your-health/about-covid-19/basics-covid-19.html>

<sup>6</sup> The court credits the counseling bills submitted by Ms. Prescott. See Pl. Ex. 14.

Prescott and Ms. Floyd-Torres, while some members of the crowd appeared to want Ms. Gilshteyn detained. In the midst of this somewhat chaotic scene, Ms. Gilshteyn can be heard to say on the videotape, “Get these crazy Black Lives Matter activists away from me.” Police eventually arrived on the scene and, sometime later that day, Ms. Gilshteyn was arrested.

The time period between when Ms. Gilshteyn approached Ms. Prescott and Ms. Floyd-Torres and when Ms. Gilshteyn spat on Ms. Prescott and walked away is approximately one minute.

#### LEGAL ANALYSIS

“A prejudgment remedy means any remedy or combination of remedies that enables a person by way of attachment, foreign attachment, garnishment or replevin to deprive the defendant in a civil action of, or affect the use, possession or enjoyment by such defendant of, his property prior to final judgment . . . . A prejudgment remedy is available upon a finding by the court that there is probable cause that a judgment in the amount of the prejudgment remedy sought, or in an amount greater than the amount of the prejudgment remedy sought, taking into account any defenses, counterclaims or set-offs, will be rendered in the matter in favor of the plaintiff . . . .” (Citation omitted; internal quotation marks omitted.) *TES Franchising, LLC v. Feldman*, supra, 286 Conn. 136-37; see also *Konover Development Corp. v. Waterbury Omega, LLC*, 214 Conn. App. 648, 657, 281 A.3d 1221, cert. denied, 345 Conn. 919, 284 A.3d 627 (2022).

“Proof of probable cause as a condition of obtaining a prejudgment remedy is not as demanding as proof by a fair preponderance of the evidence. . . . The legal idea of

probable cause is a bona fide belief in the existence of the facts essential under the law for the action and such as would warrant a man of ordinary caution, prudence and judgment, under the circumstances, in entertaining it. . . . Probable cause is a flexible common sense standard. It does not demand that a belief be correct or more likely true than false. . . . Under this standard, the trial court's function is to determine whether there is probable cause to believe that a judgment will be rendered in favor of the plaintiff in a trial on the merits." (Citations omitted; internal quotation marks omitted.) *TES Franchising, LLC v. Feldman*, supra, 286 Conn. 137; see also *Konover Development Corp. v. Waterbury Omega, LLC*, supra, 214 Conn. App. 657-58. "[I]t is well settled that, in determining whether to grant a prejudgment remedy, the trial court must evaluate both parties' evidence as well as any defenses, counterclaims and setoffs." *TES Franchising, LLC v. Feldman*, supra, 141; see also *Konover Development Corp. v. Waterbury Omega, LLC*, supra, 658.

*a. Assault and Battery*

"A civil assault is the intentional causing of imminent apprehension of harmful or offensive contact in another." *DeWitt v. John Hancock Mutual Life Ins. Co.*, 5 Conn. App. 590, 594, 501 A.2d 768 (1985). "Assault has also been defined as any attempt with force or violence to do corporeal offense to another, coupled with the present apparent ability to complete the act . . . . An actor is subject to liability to another for battery if (a) he acts intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such a contact, and (b) a harmful contact with the person of the other directly or indirectly results." (Citations



omitted; internal quotation marks omitted.) *Engle v. Bosco*, Superior Court, judicial district of New Britain, Docket No. CV-05-4006996-S (September 14, 2006, *Robinson, J.*) (2006 WL 2773603, \*3).

The court finds that there is probable cause to conclude, based on the facts found by the court as set forth above, that Ms. Gilshteyn committed a civil assault and battery against Ms. Prescott. The court finds that Ms. Gilshteyn intentionally spat upon Ms. Prescott and that Ms. Gilshteyn caused her spit to land on Ms. Prescott's person.

*b. Intentional Infliction of Emotional Distress*

"In order for the plaintiff to prevail in a case for liability under . . . [intentional infliction of emotional distress], four elements must be established. It must be shown: (1) that the actor intended to inflict emotional distress or that he knew or should have known that emotional distress was the likely result of his conduct; (2) that the conduct was extreme and outrageous; (3) that the defendant's conduct was the cause of the plaintiff's distress; and (4) that the emotional distress sustained by the plaintiff was severe. . . . Whether a defendant's conduct is sufficient to satisfy the requirement that it be extreme and outrageous is initially a question for the court to determine. . . . Liability for intentional infliction of emotional distress requires conduct that exceeds all bounds usually tolerated by decent society." (Citation omitted; internal quotation marks omitted.) *Gagnon v. Housatonic Valley Tourism District Commission*, 92 Conn. App. 835, 846, 888 A.2d 104 (2005). "Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized

community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, Outrageous! . . . Conduct on the part of the defendant that is merely insulting or displays bad manners or results in hurt feelings is insufficient to form the basis for an action based upon intentional infliction of emotional distress.” (Internal quotation marks omitted.) *Little v. Yale University*, 92 Conn. App. 232, 239-40, 884 A.2d 427 (2005), cert. denied, 276 Conn. 936, 891 A.2d 1 (2006).

The court finds that there is probable cause to conclude, based on the facts found by the court as set forth above, that Ms. Gilshteyn intentionally inflicted emotional distress on Ms. Prescott. Ms. Gilshteyn intentionally spat in Ms. Prescott’s face—an outrageous act that goes beyond all possible bounds of decency and that Ms. Gilshteyn knew would cause Ms. Prescott emotional distress. The court finds that this is particularly so in the midst of a global pandemic wherein the deadly virus at issue can be transmitted to other persons through an infected person’s saliva. Ms. Prescott testified that she experienced severe emotional distress as a result of Ms. Gilshteyn’s conduct, and the court credited that testimony.

*c. General Statutes § 52-571c*

General Statutes § 52-571c (a) provides that “[a]ny person injured in person or property as a result of an act that constitutes a violation of section 53a-181j, 53a-181k or 53a-181l may bring a civil action against the person who committed such act to recover damages for such injury.” General Statutes § 53a-181k (a) provides in relevant part that “[a] person is guilty of intimidation based on bigotry or bias . . . when such

person maliciously, and with specific intent to intimidate or harass another person or group of persons motivated in whole or in substantial part by the actual or perceived race, religion, ethnicity, disability, sex, sexual orientation or gender identity or expression of such other person or group of persons, does any of the following: (1) Causes physical contact with such other person or group of persons . . . .”

The court finds that there is probable cause to conclude, based on the facts found by the court as set forth above, that Ms. Gilshteyn maliciously and intentionally harassed and intimidated Ms. Prescott by intentionally spitting in Ms. Prescott’s face and that Ms. Gilshteyn’s actions in so doing were motivated, in whole or in substantial part, by Ms. Prescott’s race. In making this finding, the court relies on the following specific facts. Ms. Prescott is African-American. Ms. Gilshteyn is white. Ms. Prescott was actively expressing her support for the Black Lives Matter movement at the time in question. After hearing Ms. Prescott express her support for the Black Lives Matter movement, Ms. Gilshteyn intentionally left her initial position at the metal fence and walked over to stand next to Ms. Prescott. Upon reaching Ms. Prescott and Ms. Floyd-Torres, Ms. Gilshteyn immediately expressed her disagreement with Ms. Prescott’s views by using what an expert witness testified is a racist trope—asking about so-called “black on black crime.” Seconds later, Ms. Gilshteyn spat on Ms. Prescott. Stated plainly, when a white person spits on a black person while that black person is expressing views in support of the Black Lives Matter movement, and the white person disputes those views by expressing a racist trope, a person of ordinary judgment would,

at a minimum, entertain the idea that the white person's decision to spit on the black person was motivated in substantial part by race.<sup>7</sup>

*d. Defenses, Counterclaims, Setoffs*

Ms. Gilshteyn filed a counterclaim against Ms. Prescott alleging assault, battery, and intentional infliction of emotional distress. See Doc. No. 108.00. In support of her assault and battery claims, Ms. Gilshteyn alleges that because Ms. Prescott was shouting into her megaphone right next to Ms. Gilshteyn and her baby, Ms. Gilshteyn was fearful that she and her baby would suffer hearing loss and that she and her baby were directly impacted by the sound waves emanating from Ms. Prescott's megaphone. In support of her intentional infliction of emotional distress claim, Ms. Gilshteyn alleges that Ms. Prescott published her home address on social media and, as a result, Ms. Gilshteyn has received threats to her and her family's safety and, thereby, has suffered emotional damage.

As succinctly stated by Judge Elgo, "A civil assault is the intentional causing of imminent apprehension of harmful or offensive contact in another. . . . A battery is a completed assault." (Citations omitted; internal quotation marks omitted.) *Correa v. Stevens*, Superior Court, judicial district of Hartford, Docket No. CV-05-4012470-S (July 18, 2008, *Elgo, J.*) (2008 WL 3852417, \*3), *aff'd*, 118 Conn. App. 903, 983 A.2d 302 (2009). The court finds that Ms. Gilshteyn failed to present sufficient evidence to demonstrate probable cause to sustain her claims for assault and battery. With respect

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<sup>7</sup> The court expresses no view on whether the facts found by the court herein meet the standard of preponderance of the evidence.

to the assault claim, the court does not credit any evidence that Ms. Gilshteyn was concerned about her own hearing. The court notes that Ms. Gilshteyn deliberately moved next to Ms. Prescott—knowing Ms. Prescott was shouting into a megaphone—and never moved away from Ms. Prescott until Ms. Gilshteyn spit on Ms. Prescott. Ms. Gilshteyn’s baby is not a party to this action in any capacity. Thus Ms. Gilshteyn may not assert claims on behalf of a nonparty. There is no probable cause for Ms. Gilshteyn’s battery claim because there is no evidence that Ms. Prescott ever physically touched Ms. Gilshteyn and Ms. Gilshteyn cites no legal authority for the proposition that “sound waves” (at least those as are at issue here) are a proper basis for a battery claim. With respect to Ms. Gilshteyn’s claim of intentional infliction of emotional distress, Ms. Gilshteyn presented no credible evidence that Ms. Prescott published Ms. Gilshteyn’s address on social media.

Finally, even if the above were not the case, Ms. Gilshteyn presented no credible evidence as to what damages she may have suffered as a result of any of the three claims Ms. Gilshteyn asserts, and, therefore, the court cannot reasonably determine any damage amount to offset against any prejudgment remedy that may be awarded to Ms. Prescott by the court.

*e. Damages*

A court has broad discretion in awarding damages for emotional distress. See *Patino v. Birken Mfg. Co.*, 304 Conn. 679, 706-707, 41 A.3d 1013 (2012). Here, the court concludes that the damages suffered by Ms. Prescott as a result of being spat upon by Ms. Gilshteyn are primarily emotional distress damages. The court awards Ms.

Prescott a prejudgment remedy in the amount of \$75,000 in emotional distress damages. Because the court finds probable cause to conclude that Ms. Gilshteyn violated General Statutes §§ 52-571c and 53a-181k, the court trebles this initial damage amount to \$225,000. See General Statutes § 52-571c (b).

In setting an appropriate initial emotional distress damage amount, the court relies on the following facts. Ms. Prescott was spat upon in public. The court also finds, as set forth above, that Ms. Prescott was spat upon because she is African-American. The court credits Ms. Prescott's testimony that these events are deeply humiliating to Ms. Prescott, caused Ms. Prescott severe emotional distress, and reawakened trauma related to a prior sexual assault. Additionally, Ms. Prescott is immunocompromised as a result of her MS diagnosis, and, on January 6, 2021, Connecticut was still in the midst of the COVID-19 pandemic. COVID-19 can be spread by saliva, and a COVID-19 diagnosis for Ms. Prescott would not only be emotionally distressing in and of itself, but especially so for Ms. Prescott because COVID-19 could aggravate Ms. Prescott's preexisting MS, a disease that Ms. Prescott had seen kill two of her family members. Ms. Prescott also had to wait a period of time before a test could confirm she was COVID-19 negative.

Finally, the court awards Ms. Prescott \$5,700 in economic damages for counseling treatment proximately caused by Ms. Gilshteyn's conduct. See Pl. Ex. 14. Pursuant to General Statutes §§ 52-571c and 53a-181k, the court trebles these economic damages to \$17,100.

*f. Attorney's Fees*

A court may award attorney's fees for violation of General Statutes § 52-571c. See General Statutes § 52-571c (b); *Simms v. Chaisson*, 277 Conn. 319, 336-37, 890 A.2d 548 (2006). Counsel for Ms. Prescott filed an affidavit and attorney billing records totaling \$53,139.60 for legal work completed on this matter. See Doc. No. 122.00. The court has reviewed the affidavit and billing records and finds the amounts set forth therein reasonable. The court awards Ms. Prescott \$53,139.60 in attorney's fees.

CONCLUSION

For all the reasons set forth above, the court finds probable cause that a judgment equal to or greater than \$295,239.60 will be rendered in favor of Ms. Prescott, taking into account all defenses, counterclaims, and setoffs that may be asserted by Ms. Gilshteyn. Accordingly, the court grants the application for prejudgment remedy. Ms. Prescott may attach such property owned by Ms. Gilshteyn up to the amount of \$295,239.60, or Ms. Gilshteyn may post an appropriate bond securing said amount.

  
\_\_\_\_\_, J.  
Budzik

## Checklist for Clerk

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**Case Name:** Prescott v. Gilshteyn

**Memorandum of Decision dated:** 3/15/2023

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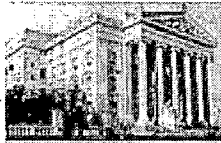
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**HHD-CV22-5071036-S**

**PRESCOTT, KEREN v. GILSHTEYN, YULIYA**

Prefix/Suffix:  
[none]

Case Type: T40 File Date: 12/17/2021 Return Date: 01/11/2022

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## Case Information

Case Type: T40 - Torts - Assault and Battery  
Court Location: HARTFORD JD  
List Type: No List Type  
Trial List Claim:

Last Action Date: 03/10/2023 (The "last action date" is the date the information was entered in the system)

## Disposition Information

Disposition Date:

Disposition:

Judge or Magistrate:

## Party & Appearance Information

Party

No Fee  
Party

Category

P-01 KEREN PRESCOTT

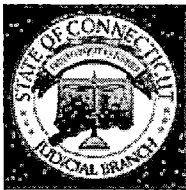
Attorney: ☐ BBB ATTORNEYS LLC (433193) File Date: 02/07/2023  
3651 MAIN STREET  
SUITE 200  
STRATFORD, CT 06614

Plaintiff

D-01 YULIYA GILSHTEYN

Attorney: ☐ PATTIS & SMITH LLC (423934) File Date: 05/17/2022  
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Defendant



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